

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 192X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—
IN ANDERSON AND WOODFORD COUNTIES, KY

Decided: January 11, 2005

By decision and notice of interim trail use or abandonment (NITU) served on May 28, 2004, a 180-day period was authorized for the Tyrone Bridge and Rail Company (TBRC) to negotiate an interim trail use/rail banking agreement (agreement) with the Norfolk Southern Railway Company (NS) for a line of railroad between milepost 0.7-LL, at Lawrenceburg, and milepost 3.5-LL, at Tyrone, in Anderson and Woodford Counties, KY, a distance of approximately 2.8 miles (line).¹ This decision also extended the NITU negotiating period for TBRC to July 2, 2004. A subsequent decision served on July 2, 2004, further extended the NITU negotiation period for TBRC through December 29, 2004.

On January 10, 2005, the Board received TBRC's motion to extend the NITU negotiation period for an additional 180 days. NS's reply to TBRC's anticipated request for an extension of the NITU negotiation period was received on January 6, 2005. NS indicates that it has not consummated the abandonment and that it consents to the request to extend the trail use negotiation period.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). An extension of time will promote the establishment of trails and rail banking consistent with the National Trails System Act, 16 U.S.C. 1247(d). Accordingly, the NITU negotiating period will be extended through June 27, 2005.

¹ This decision vacated the existing NITU and designated TBRC to serve as the new interim trail manager, substituting TBRC in lieu of the Rails to Trails Conservancy, to negotiate a trail use agreement with NS.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. TBRC's request to extend the NITU negotiating period is granted.
3. The NITU negotiating period is extended through June 27, 2005.
4. This decision is effective on the date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary